Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-860

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE,
Appellant,

—*v.*—

JOHN A. JOBST.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

JURISDICTIONAL STATEMENT FILED DECEMBER 22, 1976
PROBABLE JURISDICTION NOTED FEBRUARY 22, 1977

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The memoranda and orders of the district court, dated January 15, 1974, and July 27, 1976, the judgment of the district court, dated July 27, 1976, and the notice of appeal to the Supreme Court, dated August 24, 1976, are contained in the appendices to the jurisdictional statement (J.S. App. A-C, E)

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1972	
Aug. 18	Complaint—filed. Writ & 3 copies issued for U.S. Marshal.
Aug. 21	USM-285 bearing return of U. S. Marshal showing service on U. S. Justice Dept, and USAtty. for the Western District of Missouri, date of 8/17/1972—Filed.
Oct. 3	Answer, along with a certified copy of the transcript of the record—filed. Submitted.
Nov. 5	Memorandum and Order—filed (ORDERED that plaintiff show cause in writing within (10) days why a three-judge court should be convened to hear and determine this case; and ORDERED that defendant file an appropriate response within (5) days thereafter). Copies mailed to counsel.
Nov. 13	Motion with supporting memorandum for summary judgment—Filed by defendant.
Nov. 17	Suggestions in support of plaintiff's request for a three-judge court and remarks in regard to the propriety of processing plaintiff's action by cross motions for summary judgment—Filed.
Nov. 21	Application for an enlargement of time, FOLLOWING THE COURT'S RULING ON THE PROPRIETY OF A THREE-JUDGE COURT, in which plaintiff may file suggestions in opposition to motion of defendant for summary judgment filed November 13, 1972—Filed (not opposition from defendant). Submitted.
Nov. 22	Motion for amendment to defendant's memorandum in support of defendant's motion for summary judgment—Filed. Submitted.
	Defendant's suggestions in opposition to plaintiff's request for a three-judge court—Filed. Submitted.

DATE	FILINGS—PROCEEDINGS

1972

Nov. 27 Memorandum and Order—Filed. (Plaintiff's motion to extend time (see application of 11/21/72) is hereby denied. Time is extended to a total of 20 days within which plaintiff may file opposition to defendant's motion for summary judgment. JWO) Copies to counsel.

Nov. 28 Application for extension of time to December 9, 1972 within which plaintiff may file response to motion for summary judgment—Filed (counsel submitted copy of application and form of order directly to the Court).

Dec. 4 Motion with supporting suggestions for leave to file amended complaint—Filed. by plaintiff.

Dec. 7 Plaintiff's suggestions in reply to defendant's suggestions in opposition to plaintiff's request for a three-judge court—Filed.

Dec. 13 Motion to request leave to file defendant's supplemental memorandum of law—Filed. Submitted.

Defendant's supplemental memorandum of law—Filed.

Dec. 15 Suggestions in opposition to defendant's motion for summary judgment—Filed by plaintiff. Submitted.

1973

Jan. 22 Defendant's Reply brief to plaintiff's brief in opposition to motion for summary judgment—Filed. Submitted.

May 11 Memorandum and Order—Filed. (IT IS ORDERED: Plaintiff's application for convening three-judge court is hereby denied; plaintiff may file a cross-motion for summary judgment within ten (10) days if he so wishes; parties are to indicate within ten (10) days if additional briefs are necessary; plaintiff's motion to file his first amended complaint is hereby denied—plaintiff may make any amendments he deems necessary by interlineation. JWO) Copies to counsel.

DATE	FILINGS—PROCEEDINGS

1973

May 18 Motion for Summary Judgment (adopting suggestions used in opposition to defendant's motion for summary judgment)—Filed by plaintiff. Submitted.

1974

Jan. 15 Memorandum and Order—Filed. (IT IS ORDERED that 42 USC, Secs. 402(d)(1)(D) & 402(d)(5) as applied to child's insurance beneficiaries who marry totally disabled persons who DO NOT receive child's insurance benefits are hereby declared UNCONSTITUTIONAL; Motion of Respondent for summary judgment is hereby *denied*; that the decisions of the Secretary is hereby *reversed*; and that plaintiff's motion for summary judgment is hereby granted and this case is hereby remanded for the sole purpose and express direction that plaintiff's claim be allowed. JWO) Copies to counsel.

Jan. 15 Cost statement mailed.

Feb. 8 Notice of Appeal—filed. Copies to counsel.
Affidavit of Service—filed.

Feb. 11 Bill of Costs ($23.00)—filed.

Nov. 15 Judgment from the Supreme Court (certified copy)—filed. [On consideration Whereof, it is ordered that the judgment of said United States District Court in this cause be, and the same is hereby, vacated; and that this cause be, and the same is hereby, remanded to the United States District Court for the Western District of Missouri for reconsideration in light of 42 U.S.C. (Supp. II, 1972) 1381 et seq. (86 Stat. 1329; Pub. L. No. 92-603 (Oct. 30, 1972.)

1975

Feb. 5 Plaintiff's first interrogatories to defendant—Filed.

Mar. 7 Defendant's motion with supporting suggestions for extension of time to response to plaintiff's first interrogatories, plaintiff agreeing—Filed. Submitted.

DATE	FILINGS—PROCEEDINGS

1975

Mar. 7 Order granting defendant time extension through April 7, 1975 for filing of response to plaintiff's first interrogatories—Filed. Copies served.

Apr. 8 Defendant's motion for enlargement of time to answer certain interrogatories with suggestions in support—filed and submitted.

Apr. 7 Defendant's answer to plaintiff's first interrogatories —filed.

Apr. 14 Order granting defendant extension of time through April 17, 1975 to answer plaintiff's first interrogatories (enumerated herein)—Filed. Copies to counsel.

Apr. 17 Defendant's answers to plaintiff's first interrogatories—Filed.

1976

Mar. 31 Defendant's brief on remand—Filed.

Apr. 2 Stipulation of Facts—Filed.

May 3 Plaintiff's Memorandum of Law on Remand—Filed & submitted.

Jul. 27 MEMORANDUM—And Order, filed. (That the judgment originally entered in this case should be and is hereby reinstated) Copies to counsel.

Jul. 27 JUDGMENT—On Decision by the Court (RFC), filed.

Aug. 24 Notice of Appeal (to the Supreme Court) filed by USA.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Civil Action No. 20495-1

[Filed Aug. 18, 1972]

JOHN A. JOBST, PLAINTIFF

vs.

ELLIOT C. RICHARDSON, SECRETARY OF
HEALTH, EDUCATION, AND WELFARE, DEFENDANT

COMPLAINT

Preliminary Statement

This is a civil action brought by the plaintiff in his own behalf seeking a declaratory judgment and injunctive relief declaring unconstitutional Title 42 U.S.C Section 402 (d) (1) (D) (Section 202(d) (5) of the Social Security Act as amended), which deprives plaintiff of his right to marry anyone he so chooses without having his child's insurance benefits (disability) terminated in violation of the due process clause of the Fifth Amendment to the United States Constitution.

Jurisdiction

1. The jurisdiction of this court is invoked pursuant to Title 42 U.S.C. Section 405(g) to review a final decision or decisions of the defendant.

2. Plaintiff's action for declaratory relief is sought pursuant to Title 28 U.S.C. Section 2201-2202 and Rule 57 of the Federal Rules of Civil Procedure, all of which relate to declaratory judgment.

3. A three-judge court is requested to hear and determine the challenge to the constitutionality of Title 42 U.S.C. Section 402(d) (1) (D) (Section 202(d) (5) of the

Social Security Act as amended), pursuant to Title 28 U.S.C. Section 2282 and 2284.

Parties

4. The plaintiff is an adult citizen of the County of Jackson, City of Independence, State of Missouri, residing at 1315 Ralston.

5. The defendant is the Secretary of Health, Education, and Welfare of the United States, and at all times heretofore and hereinafter mentioned was in exercise of his duties as such.

Facts

6. The wage earner, John L. Jobst, died on March 19, 1956. Beatrice M. Jobst, wife of the deceased wage earner, filed an application for child's insurance benefits (disability) in October, 1956, for John Arlen Jobst, born July 18, 1932. It was then determined that said child, John Arlen Jobst, was disabled prior to the attainment of age 18 and was entitled to child's insurance benefits (disability) beginning January, 1957 under Section 202 (d) of the Social Security Act.

7. In October, 1970, plaintiff advised the Social Security Administration that he was married on October 2, 1970, to Sandra Lee. Sandra Lee is a cerebral palsy victim, who although disabled, is not eligible to receive Social Security benefits. By notice dated November 11, 1970, the Social Security Administration advised plaintiff that he was not entitled to benefits for the month of October, 1970 since he had married, and because of his marriage, his childhood benefits were terminated effective October, 1970.

8. On February 11, 1971, plaintiff requested reconsideration of the determination of the Social Security Administration; on March 1, 1971, the Social Security Administration affirmed the initial determination.

9. On April 7, 1971, plaintiff filed a request for a hearing before a Hearing Examiner; such hearing was held on September 7, 1971, which resulted in a decision dated January 11, 1972, for John A. Jobst, the plaintiff in this action, a copy of which decision is attached hereto

as Plaintiff's Exhibit No. 1 and incorporated by reference.

10. Plaintiff received a letter dated March 1, 1972, from the Appeals Council of the Department of Health, Education, and Welfare, stating that on its own motion it had decided to review the hearing examiner's decision. On June 22, 1972, the Appeals Council reversed the decision of the hearing examiner, a copy of which decision is attached hereto as Plaintiff's Exhibit No. 2 and incorporated by reference. The plaintiff has therefore fully and completely exhausted his administrative remedies.

Causes of Action

11. The defendant in terminating plaintiff's child's insurance benefits (disability) upon his marriage to a disabled woman not eligible for Social Security benefits, violated the logical and rational standards required by the due process clause of the Fifth Amendment to the Constitution of the United States. Such termination does not bear a rational or reasonable relationship to the ability of a disabled woman to support her husband.

12. Plaintiff was invidiously discriminated against in that he was terminated from child's insurance benefits (disability) because he married another disabled person not qualified for specific Social Security benefits. Such classification is without a rational basis and is in violation of the Fifth Amendment to the Constitution of the United States.

13. The defendant's deprivation of plaintiff's benefits has caused the plaintiff extreme hardships, suffering and anxiety. The plaintiff has suffered irreparable harm as a result of the termination of benefits and will continue to so suffer until such time as such law is declared unconstitutional.

Prayer for Relief

WHEREFORE, plaintiff respectfully prays that this court:

1. Assume jurisdiction of this cause and convene a three-judge district court pursuant to Title 28 U.S.C. Section 2282 and 2284.

2. Enter a judgment declaring unconstitutional Title 42 U.S.C. 402(d)(1)(D) (Section 202(d)(5) of the Social Security Act as amended) which deprives plaintiff of his right to marry anyone he so chooses without having his child's insurance benefits (disability) terminated, in violation of the due process clause of the Fifth Amendment to the United States Constitution.

3. Issue a permanent injunction restraining defendant, his successor in office, agents, and employees from enforcing Title 42 U.S.C. Section 402(d)(1)(D).

4. Reinstate plaintiff's child's insurance benefits (disability) as of October, 1970.

5. Allow plaintiff such other relief or judgment as the court may deem just and equitable in the premises.

/s/ J. D. Riffel
J. D. RIFFEL
Legal Aid and Defender Society of
Greater Kansas City, Inc.
1718 East 8th Street
Kansas City, Missouri 64106
221-3776

ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Civil Action No. 20495-1

[Filed Oct. 3, 1972]

JOHN A. JOBST, PLAINTIFF

v.

ELLIOT C. RICHARDSON, SECRETARY OF
HEALTH, EDUCATION AND WELFARE, DEFENDANT

ANSWER

Comes now the defendant, Elliot C. Richardson, by his counsel, Sheryle L. Randol, Assistant United States Attorney for the Western District of Missouri, and for his answer to the captioned complaint, states as follows:

1. That defendant admits the allegations contained in paragraphs 1, 4, 5, 8, 9 and 10 of the complaint.

2. That in response to the allegations contained in paragraph 2, defendant states that Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g) sets out the exclusive remedy for a claim under Title II of the Social Security Act.

3. That in response to the allegations contained in paragraph 3, defendant denies that the requirements for convening a three-judge court have been met.

4. That in response to the allegations contained in paragraphs 6 and 7, defendant states that the facts and issues in this matter are fully set forth in the administrative transcript, including the evidence upon which the findings and decisions complained of are based, a certified copy of which is attached hereto as part of the answer.

5. Defendant denies the allegations contained in paragraphs 11, 12 and 13.

6. That, in accordance with the provisions of Section 205(g) of the Social Security Act (42 U.S.C. § 405(g)), defendant files herein as part of the answer a certified copy of the transcript of the record, including the evidence upon which the findings and decisions complained of are based.

7. Further, defendant states that the findings of fact of the Secretary of Health, Education and Welfare are supported by substantial evidence and are conclusive on the record as a whole.

WHEREFORE, defendant prays for judgment dismissing the complaint, with costs and disbursements and for judgment in accordance with Section 205(g) of the Social Security Act (42 U.S.C. § 405(g)), affirming the decision which is the subject of this complaint.

Respectfully submitted,

BERT C. HURN
United States Attorney

By
SHERYLE L. RANDOL
Assistant United States Attorney

I hereby certify that a copy of the foregoing answer and a copy of the transcript of record have been mailed this 3rd day of October, 1972, to J. D. Riffel, Legal Aid Society, 1718 East 8th Street, Kansas City, Missouri 64106, attorney for plaintiff.

SHERYLE L. RANDOL
Assistant United States Attorney

SUPREME COURT OF THE UNITED STATES

No. 73-1758

[Filed Nov. 15, 1974, R. F. Connor, Clk., U.S. District Court, West District of Missouri]

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE, APPELLANT

v.

JOHN A. JOBST

APPEAL from the United States District Court for the Western District of Missouri.

THIS CAUSE having been submitted on the statement of jurisdiction and motion to dismiss or affirm,

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the said United States District Court in this cause be, and the same is hereby, vacated; and that this cause be, and the same is hereby, remanded to the United States District Court for the Western District of Missouri for reconsideration in light of 42 U.S.C. (Supp. II, 1972) 1381 et seq. (86 Stat. 1329; Pub. L. No. 92-603 (Oct. 30, 1972).

October 15, 1974

[SEAL]

A true copy MICHAEL RODAK, JR.
Test:

Clerk of the Supreme Court of the United States
Certified this 13th day of November, 1974

By /s/ [Illegible]
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Civil Action No. 20495-1

[Filed Apr. 2, 1976, R. F. Connor, Clk., U.S. District Court, West District of Missouri]

JOHN A. JOBST, PLAINTIFF

vs.

DAVID MATHEWS, SECRETARY OF
HEALTH, EDUCATION AND WELFARE, DEFENDANT

STIPULATION OF FACTS

Comes now plaintiff John A. Jobst by his counsel, J. D. Riffel, and defendant David Mathews by Albert D. Hoppe, Assistant United States Attorney, and upon remand of this case to the United States District Court for the Western District of Missouri hereby stipulate and agree that the following facts are admitted and require no proof:

1. John A. Jobst received child's insurance benefits under 42 U.S.C. § 402(d) from January 1957 through September 1970. On October 2, 1970, John Jobst married Sandra Lee and his social security benefits were terminated.

2. John A. Jobst received welfare benefits (partial and total disability) from November of 1970 until December of 1973 for the following periods at the following monthly rates:

Effective dates	Monthly rates
11-17-70	60.00
12-10-70	80.00
10-01-71	76.00
01-30-73	80.00

3. At all times since January 1, 1974, John Jobst has received Supplemental Security Income (SSI) benefits under 42 U.S.C. §§ 1381 *et seq.* at the following monthly rates:

Effective dates	Monthly rates
1/74 through 6/74	105.00
7/74 through 6/75	109.50
7/75 on	118.30

4. On the date of plaintiff's marriage, Sandra Lee, who suffered from cerebral palsy since birth and was determined to be disabled for purposes of Missouri's welfare program was receiving welfare benefits (partial and total disability) from the State of Missouri.

5. Sandra Jobst, nee Lee, received said welfare benefits through December of 1973 in amounts equal to her husband's monthly welfare benefits.

6. Sandra Jobst has received Supplemental Security Income (SSI) under 42 U.S.C. §§ 1381 *et seq.* since January 1, 1974, in amounts equal to her husband's monthly benefits.

7. John and Sandra Jobst received said Supplemental Security Income benefits as "conversion cases." Section 416.300(a) of Social Security Regulations No. 16.

8. Neither John nor Sandra Jobst filed an application for Supplemental Security Income benefits.

9. As of November 1, 1975, John Jobst had received $2,535.50 under the SSI program.

10. As of November 1, 1975, Sandra Jobst had received $2,535.50 under the SSI program.

11. At the present time John Jobst is receiving under the SSI program $118.30 Federal payment, 0 State payment.

12. Sandra Jobst receives the identical payments under the Supplemental Security Income program.

13. Assuming that John Jobst was still receiving child's insurance benefits under 42 U.S.C. § 402(d)(1), his present monthly benefit would be $183.60 and his monthly benefits for prior months would have been as follows:

Effective date	Monthly rate
10/70 through 12/70	115.90
1/71 through 8/72	127.50
9/72 through 2/74	153.00
3/74 through 5/74	163.80
6/74 through 5/75	169.90
6/75 on	183.60

14. Child's insurance benefits are determined by first computing the primary insurance amount under 42 U.S.C. § 415 and then applying the appropriate subsection under 42 U.S.C. § 402 to establish the monthly benefit. In the case of John Jobst, in the event he were receiving child's insurance benefits, he would continue to receive three-fourths of the primary insurance amount of his deceased father.

15. Assuming that John Jobst had continued receiving child's insurance benefits under 42 U.S.C. § 402(d)(1), the SSI benefits payable to plaintiff and spouse would have been as follows:

Effective dates	Plaintiff's Title II benefit	SSI benefits payable to couple (husband's rate/wife's rate)
1/74 thru 2/74	153.00	77.00 (35.50/38.50)
3/74 thru 5/74	163.80	66.20 (33.10/33.10)
6/74	169.90	60.10 (30.05/30.05)
7/74 thru 5/75	169.90	69.10 (34.55/34.55)
6/75	183.60	55.40 (27.70/27.70)
7/75 on	183.60	73.00 (36.50/36.50)

16. John Jobst also maintains that assuming he were receiving child's insurance benefits under 42 U.S.C. § 402(d)(1), that he would be entitled to an additional state supplemental payment under Missouri's current welfare plan.

17. John Jobst, as a childhood disability recipient, would not be subject to the annual earnings test found in 42 U.S.C. 402(b), and his monthly benefit would not be reduced because of wages. However, his wages could

lead to the determination that his disability had ceased. See 42 U.S.C. 423(d)(4); 20 C.F.R. 404.1532-34.

18. Assuming that Mr. Jobst remained eligible for receipt of child's insurance benefits, there would be no restriction with respect to the value of assets he could accumulate.

19. The maximum monthly wages that John and Sandra Jobst may receive as SSI beneficiaries and remain eligible for full benefits is $85 per month. Everything they would earn above $80 would reduce their combined payments by $1.00 for every $2.00 received.

20. As SSI beneficiaries, the maximum value of resources John and Sandra Jobst may have and still remain eligible for benefits is the greater of (a) $2,250 or (b) the amount permitted under the State welfare plan under which they received benefits in December 1973 (Section 416.1205, 416.1260, Exhibit 1), less those items excluded from their resources pursuant to Section 416.210-34, 416.1260-61.

22. The possession and ownership of real property and liquid resources has no effect on the eligibility of recipients for Title II recipients, 42 U.S.C. § 402(d)(1).

23. Assuming that the Court held that John Jobst was entitled to child's insurance benefits at all times since said date of termination, the Title II child's insurance benefits which would have been paid through November 1, 1975, would have been $9,215.80. The defendant maintains that this amount must be reduced by $3,314.20, which would be SSI overpayment to the couple resulting from SSI payments made January, 1974 through October, 1975 (see Nos. 3 and 6) or $4,834.40 versus the SSI payments which would have been made if plaintiff received Title II benefits (see No. 15) or $1,520.20.

24. Subsequent to May, 1975, these benefits would have continued to accrue at the rate of $183.60 per month.

25. Plaintiff and defendant agree to the authenticity and admissibility of attached Exhibits 1, 2 and 3, Regulations No. 16, § 416.300(a) and Subparts K and L; all regulations of defendant in connection with administration of the SSI program; the plaintiff interrogatories

and defendant's answers thereto; and the transcript of the administrative record.

26. Plaintiff and his wife, Sandra Jobst, have been separated since December of 1975.

27. Plaintiff John A. Jobst may reply to defendant's Memorandum of Law filed herein on or before May 3, 1976.

Respectfully submitted,

BURT C. HURN
United States Attorney

By /s/ Albert D. Hoppe
Assistant United States Attorney

ATTORNEY FOR DEFENDANT

/s/ J. D. Riffel
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ATTORNEY FOR PLAINTIFF

SUPREME COURT OF THE UNITED STATES

No. 76-860

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE, APPELLANT

v.

JOHN A. JOBST

APPEAL from the United States District Court for the Western District of Missouri.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

February 22, 1977

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